



## 2 CFR Part 700

RIN 0412-AB01

### **USAID Grant Regulations; Removing the Program Income Restriction on For-Profit Entities**

**AGENCY:** U.S. Agency for International Development.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Agency for International Development (USAID) proposes to amend the rules for administering Federal awards to remove a prohibition on for-profit entities from adding program income to a Federal award. This change allows any USAID assistance recipient – whether nonprofit or for-profit – to use the “addition method” for managing program income under a Federal award. This will align USAID’s approach to program income with other Federal agencies.

**DATES:** Comments must be received no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit comments, identified by the title of the action and Regulatory Information Number (RIN) through the Federal eRulemaking Portal at <https://www.regulations.gov> by following the instructions for submitting comments. Please include your name, company name (if any), and “0412-AB01” on any attachments. If your comment cannot be submitted using <https://www.regulations.gov>, please email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

**FOR FURTHER INFORMATION CONTACT:** Lyudmila Bond, USAID/M/OAA/P,  
202-916-2622, [polycymailbox@usaid.gov](mailto:polycymailbox@usaid.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Instructions**

All comments must be in writing and submitted through the method specified in the "**ADDRESSES**" section above. All submissions must include the title of the action and RIN for this rulemaking.

Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message.

All comments will be made available at <http://www.regulations.gov> for public review without change, including any personal information provided. We recommend that you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute.

USAID will only address substantive comments on the rule. USAID may not consider comments that are insubstantial or outside the scope of the proposed rule.

**B. Background**

In 1995, USAID established its own program-specific assistance regulation prohibiting the use of the "addition method" by any recipient that is a for-profit entity. The interim final rule, *Administration of Assistance Awards to US Non-Governmental*

*Organizations*, 60 FR 3744, January 19, 1995, was codified at 22 CFR part 226. Prior to 2013, Government-wide guidance on assistance awards was contained in several Office of Management and Budget (OMB) circulars. Agencies promulgated their own assistance award guidance in policy statements and regulations. In 2014, OMB consolidated and updated its guidance in the interim final rule, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly referred to as the "Uniform Guidance"), at 79 FR 75867, December 26, 2014, and codified at 2 CFR part 200. Program income is defined in 2 CFR 200.1, with 2 CFR 200.307(e) describing the three methods for recipients to account for program income under an award: deduction, addition, and cost share/matching. In 2015, USAID published its final rule at 80 FR 55721, October 19, 2015, adopting the Uniform Guidance and re-codifying its own regulations in 2 CFR part 700. At that time, OMB's instructions were that a change to agency-specific policy must be done separately from the adoption of 2 CFR part 200. Thus, the current USAID regulation, 2 CFR 700.13(a)(2) (Additional Provisions for For-Profit Entities) extended the USAID-specific restriction without any revisions.

### **C. Analysis**

The purpose of USAID's action to delete the prohibition on for-profit recipients adding earned program income to Federal awards is to expand and extend the activities that USAID supports, when

these activities are implemented by a for-profit entity. When program income is generated, the addition method means that recipients may add such income back into the award to continue supporting the activity. Section 2 CFR 200.307(e)(2) requires that the added "program income must be used for the purposes and under the conditions of the Federal award." Thus, all recipients must comply with the terms of the award regardless of its entity type.

The Federal agencies that have adopted OMB's Uniform Guidance have not generally imposed a prohibition on the use of the addition method by for-profit entities, and no Federal agency appears to have imposed a complete prohibition on the addition method by for-profit entities. The Department of State, under 2 CFR parts 600 through 699, adopts the application of the Uniform Guidance to its assistance awards, including to for-profit entities, but does not impose any additional program income restrictions on them. As such, for-profit entities of assistance awards from the Department of State may apply the addition method for program income. Similarly, the Department of Energy, through its supplemental regulations under 2 CFR parts 910 through 999, adopts the application of the Uniform Guidance and expressly applies them to for-profit entities, but it does not create any additional program income regulations. Only one Federal agency is known to maintain a restriction: the Department of Health and Human Services, under 45 CFR 75.216

through 75.218, does not allow for-profit entities to use the addition method, except for grants for research in its Small Business Innovation Research and Small Business Technology Transfer Research programs.

Removing this restriction from 2 CFR 700.13 will support USAID's Private Sector Engagement (PSE) policy by leveling the playing field for all recipients. In short, the result of this change would be that any USAID recipient - whether non-profit or for-profit - would be able to use the addition method for program income, subject to all the same regulations. Section 2 CFR 700.13 would continue to state that for-profit entities cannot use the addition method for using program income as profit.

USAID is seeking public comments on the proposed change to 2 CFR 700.13. This proposed change will allow program income earned by a for-profit entity to be added to Federal awards as an option under 2 CFR 200.307(e), when such program income is used for the purposes and under the conditions of the Federal award.

#### **D. Regulatory Considerations**

##### 1. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including

potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

## 2. Regulatory Flexibility Act

The proposed rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

## 3. Paperwork Reduction Act

The proposed rule does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## **List of Subjects in 2 CFR Part 700**

Grant programs, Grants, administration.

For the reasons discussed in the preamble, USAID proposes to amend 2 CFR part 700 as set forth below:

**PART 700—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES,  
AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

1. The authority citation for 2 CFR part 700 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

**§ 700.13 [Amended]**

2. Amend § 700.13 by removing and reserving paragraph (a)(2).

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Mark Anthony Walther,  
Chief Acquisition Officer.

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